

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to Figs. 3a-3c. This sheet, which includes Figs. 3a-3c, replaces the original sheet including Figs. 3a-3c. In Figs. 3a-3c, previously unidentified roof radiator is identified with added reference numeral 58.

Attachment: Replacement Sheet  
Annotated Sheet Showing Changes

## **REMARKS/ARGUMENTS**

### *Status*

This is a Reply to the Final Office Action mailed June 30, 2009, in which the following rejections were set forth: Claims 1-4, 29-31, and 37-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,419,983 issued to Kreuzer (“*Kreuzer*”), in view of U.S. Patent No. 5,033,203 issued to Chang et al. (“*Chang*”), in view of U.S. Patent No. 4,416,068 issued to Nilsson et al. (“*Nilsson*”); Claims 5-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kreuzer* in view of *Chang* in view of *Nilsson* in further view of U.S. Patent No. 6,898,868 issued to Vermeulen (“*Vermeulen*”); Claims 11-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kreuzer* in view of *Chang* in view of *Nilsson* in further view of U.S. Patent No. 7,105,206, issued to Beck et al. (“*Beck*”); Claims 19-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kreuzer* in view of *Chang* in view of *Nilsson* in further view of U.S. Patent No. 2,498,339, issued to Miskella, (“*Miskella*”); and, Claims 32-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kreuzer* in view of *Chang* in view of *Nilsson* in further view of U.S. Patent No. 4,785,552, issued to Best, (“*Best*”).

By this response, Claims 1, 30, and 33 have been amended, Claims 29 and 31 have been cancelled, and no claims have been added. As such, Claims 1-28, 30, and 32-41 are pending in this application. No new matter has been introduced by Applicant’s amendments to the claims and because the amended claimed subject matter was present in the originally filed application, Applicant asserts that a further search of the prior art is not warranted.

### *Finality Of The Office Action*

Applicant submits that, “[b]efore final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection. Switching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early

termination, i.e., either an allowance of the application or a final rejection.” *MPEP 706.07*. And “that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.” *Id.*

Applicant respectfully objects to the finality of the Office Action and asserts that the Examiner’s initial claim construction wherein only the text following the transitional phrase “comprising” was inappropriately considered the body of the claim was incorrect—thus requiring Applicant to merely amend the claims and replace the term “including” with the synonymous term, “comprising.” That is, the transitional term “comprising” is synonymous with “including” and is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. *MPEP § 2111.03*; see also, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004). Thus, Applicant was precluded from a genuine opportunity to rebut an inappropriately searched Office Action and suitable prior art when in fact the text following the term “including” should have also been considered as claimed subject matter.

In an effort to reach a clearly defined issue, Applicant respectfully requests that the finality of the Office Action be removed.

#### *Drawings*

Figs. 3a-3b have been amended to identify the roof radiator with the reference numeral 58, which was inadvertently omitted from the drawings. Support for the roof radiator 58 can be found throughout the specification as originally filed, most notably at paragraphs 74-76 of the published application. As such, no new matter has been added.

#### *Claim Rejections*

Applicant’s sole independent Claim 1 has been rejected as being obvious in view of *Kreuzer, Chang, and Nilsson*.

Applicant has amended independent Claim 1 to include the elements of originally filed Claims 29 and 31, which are illustrated in amended figures 3a-3c of the drawings.

*Nilsson* discloses “an elevated support platform 8 which may be raised and lowered relatively to the work floor 7 by suitable elevating mechanisms shown at 9,” (cf. column 3, lines 24-27). As is evident from the passages in column 3, lines 30-34 and lines 54-58, one function of the elevating mechanism 9 is to lower the body B on the support platform 8 such that it can “roll on or off the platform 8 by way of ramps 93 onto the floor 94 below the level of the

walkway 7.” The other function is to raise and lower the body B “to a convenient working height.” To this end, the elevator mechanism may be operated by remote controllers held by the workmen.

What is further clear from these passages is that the elevating mechanism 9 is not operated while the carrier mechanism 19—“including heat radiation elements” (cf, column 4, lines 6 to 14)—is moving over the body B. Consequently, there is no control system for the lifting platform that ensures an approximately constant distance in the vertical direction between the object and the at least one radiator, as required in Applicant’s amended Claim 1.

The problem of achieving a “uniform temperature distribution” between “the roof of the car hood and booth lid” (cf, column 7, lines 30 to 47) is resolved by *Nilsson* in a different manner to that of Applicant’s claimed invention. According to *Nilsson* “two shredded parts 26 and 27 are positioned and dimensioned so that each of them can irradiate at least half of the width of the hood 15. In spite of its fairly low position below the ceiling parts 24 and 25 it will achieve sufficient irradiation from the two ceiling parts 24 and 25 and the shredded parts 26 and 27.”

In contrast, Applicant’s claimed invention seeks to obtain a similar effect not by providing additional radiators, but by changing the height of the object and thus the distance between the radiator and the upward-facing outer contour of the object. That being said, it is Applicant’s intention that amended Claim 1 denotes that this height control takes place automatically, as opposed to manually.

The remaining relied upon prior art fails to sufficiently compensate for the shortcomings of *Nilsson*. In particular, *Chang* clearly does not disclose anything about lifting platforms or control systems that are configured to control the height of a lifting platform. And with respect to *Kreuzer*, it fails to disclose the claimed at least one radiator and thus there can be no control system that controls the height of the lifting platform such that the distance in the vertical direction between the object and the at least one radiator remains at least approximately constant. Most notably, the Office Action refers to *Kreuzer*’s figure 1 in regard to Claim 31, however there is nothing in figure 1 that can be construed as disclosing such a control system.

Applicant therefore asserts that the relied upon prior art, in any combination, fails to disclose or suggest an automatic mechanism for controlling height of parts emitting radiation such that they are kept at a constant distance to the upward-facing outer contour of an object—as

is required by amended Claim 1. As such, Applicant submits that amended Claim 1, as well as all claims ultimately depending thereon, is in condition for allowance and respectfully requests that the rejections be removed and all pending claims be allowed to issue.

Lastly, should the provisional status of the nonstatutory obvious-type double patenting rejection of Claims 1-41 become permanent, Applicant is prepared to argue against such a rejection and/or overcome the rejection by providing a terminal disclaimer.

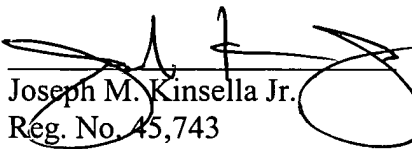
### CONCLUSION

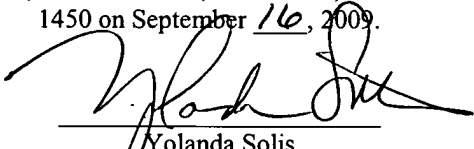
Based upon the above amendments and remarks, Applicant respectfully requests that all rejections be removed and all pending claims be passed to issuance.

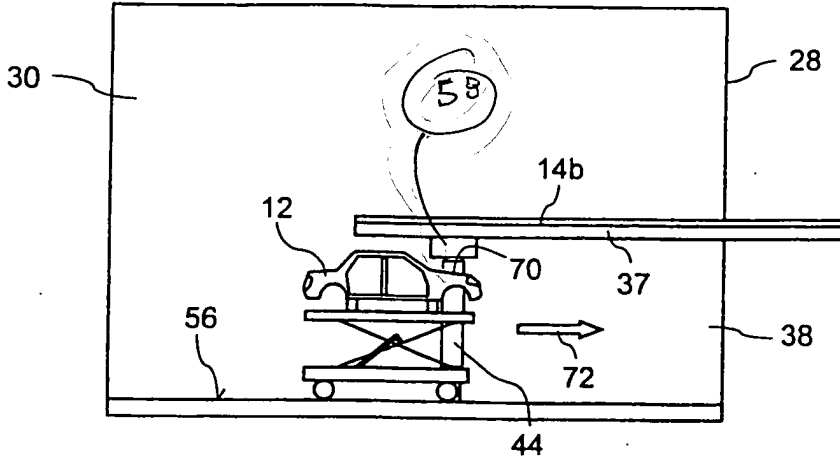
Applicant believes that no fees are required with this communication, however if any charges or fees must be paid in connection with this communication, the Commissioner is authorized to deduct such charges or fees from Applicant's Deposit Account No. 50-0545.

Respectfully submitted,

Dated: September 16, 2009

  
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CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope Addressed to: Mail Stop – AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September <u>16</u> , 2009.  Yolanda Solis



**Fig. 3a**

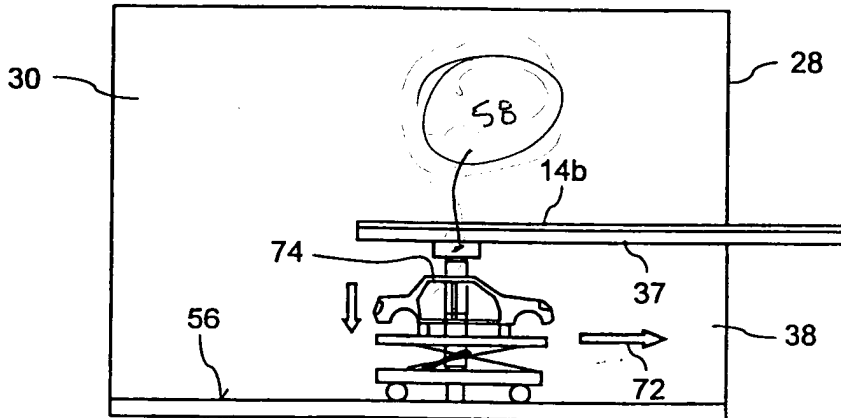
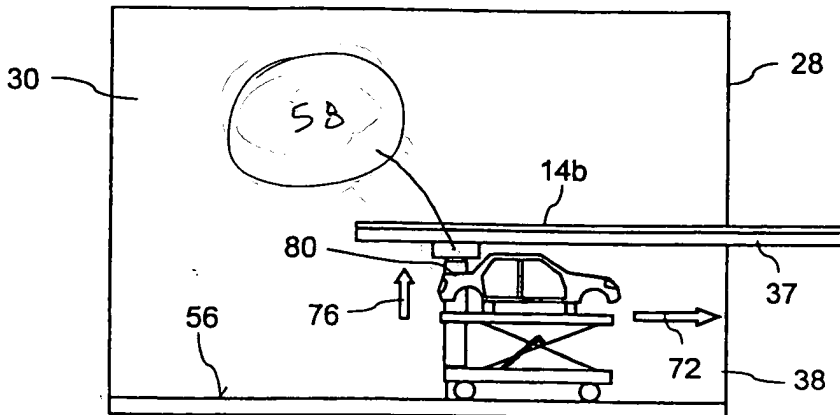


Fig. 3b



**Fig. 3c**